



ARIZONA STATE SENATE
Fifty-Third Legislature, First Regular Session

AMENDED
FACT SHEET FOR S.B. 1281

empowerment scholarship accounts; revisions

Purpose

Requires the Arizona Department of Education (ADE) to contract with a third-party to assist in the administration of the Empowerment Scholarship Account (ESA) Program and makes various changes to the administration, application processes and policies and procedures of the ESA Program.

Background

The ESA Program was established in 2011 to provide educational options for special needs students outside of the public school system. The Program has since expanded to include: 1) students attending D and F schools or school districts; 2) foster care children; 3) children in military families; 4) siblings of current or previous ESA recipients; 5) school tuition organization recipients who are eligible for the Arizona Scholarships for Pupils with Disabilities Program; and 6) students residing on an Indian Reservation ([A.R.S. § 15-2401](#)).

ESAs are funded at 90 percent of basic state aid that would otherwise be allocated to an ESA recipient's prior school district or charter school. ADE transfers this amount to the State Treasurer (Treasurer) for deposit into each ESA. ADE may retain up to five percent of the basic state aid for each ESA to be used for ADE's costs in administering the Program. The Treasurer is entitled to one percent of the five percent for its costs. Both amounts are subject to legislative appropriation.

In order to participate in the ESA Program, the parent of a qualified child must annually sign an agreement to follow the requirements outlined in statute. Parents must agree to use a portion of the ESA monies each quarter to provide an education to the student in at least reading, grammar, mathematics, social studies and science. Statute outlines permitted expenses for ESA monies which include tuition or fees, required textbooks, tutoring and curricula. Parents are required to submit a quarterly expense report to ADE detailing the expenditures ([A.R.S. § 15-2402](#)). In FY 2017, ADE estimates there are 3,500 students enrolled in the ESA program and approximately \$46 million disbursed.

According to the Joint Legislative Budget Committee's (JLBC) fiscal note, there is a potential negative impact to the state General Fund of \$914,000 in FY 2018, \$1,408,000 in FY 2019 and \$2,396,000 in FY 2020 as a result of removing public school attendance requirements for certain School Tuition Organization (STO) switcher students and modifying when students may enroll in kindergarten. JLBC notes these estimates are highly speculative and actual costs may vary substantially depending on the actual participation rates of newly eligible students.

Provisions

Eligibility

1. Removes procedures implemented in 2016 that permit students with a disability to remain on the ESA Program until 22 years of age if they obtained an Annual Education Plan developed by ADE.
2. Allows, retroactive to January 1, 2015, all ESA students to remain on the ESA program until the student graduates from high school, obtains a general equivalency diploma (GED) or reaches 22 years of age if the student continues to attend and be enrolled in a qualified school.
3. Allows ADE to request confirmation of a qualified student's progress toward graduation from high school or the completion of a GED.
4. Modifies the additional eligibility criteria concerning public school attendance to require students to attend a public school for 100 days in the prior fiscal year, rather than the first 100 days of the prior fiscal year
5. Deems a child as eligible to enroll in a kindergarten program if the child is under seven years of age when determining eligibility for students who have not previously attended a public school but are eligible to enroll in a program for preschool children with disabilities.
6. Removes attendance requirements for students who received an Arizona Scholarship for Pupils with Disabilities scholarship but did not receive monies from a School Tuition Organization (STO) under Lexie's Law.
7. Prohibits ESA students from accepting an STO scholarship during the same time the student is actively enrolled in an ESA, rather than in the same year a parent signs the agreement.
8. Allows ADE to request confirmation from a qualified school that a student is not receiving an STO scholarship and enrolled in an ESA concurrently.

Application Process and Distribution of ESA Monies

9. Requires ADE to allow an ESA applicant to identify all potentially applicable enrollment eligibility criteria and prohibits ADE from restricting the applicant to the identification of a single enrollment eligibility criterion.
10. Requires ADE to notify applicants who ADE determines are ineligible for an ESA, of the specific statutory deficiencies of the application and the rationale for the denial of the application.
11. Decreases the amount of time ADE must issue an award letter after receipt of a completed application from 45 days to 30 days.
12. Allows a parent to appeal any administrative decision, including decisions concerning enrollment eligibility.

13. Requires ADE to notify the parent of the parent's ability to appeal at the same time the parent is notified of the administrative decision.
14. Directs ADE to deposit monies into the ESA account immediately or, if necessary, deposit retroactively prorated monies at the time the parent agrees to the terms and conditions.
15. Prohibits ADE from delaying the deposit of monies into an ESA until a subsequent quarter.

Policies and Procedures

16. Specifies ADE may adopt policies and procedures, rather than rules, for the ESA Program.
17. Requires ADE to develop and implement the policies and procedures pursuant to the intent of the law and by giving students the most educational options available under the law.
18. Includes expense reporting, eligible expenses and application procedures in the policies and procedures and prohibits these policies from restricting the types or amount of curriculum choices made by parents for students.
19. Directs ADE to post on its website information and data that are updated monthly regarding ESAs that includes the following:
 - a) info on all purchases and expenditures made with ESA monies that does not violate the personal privacy of any student or family and that includes only aggregate date;
 - b) the number of enrolled students disaggregated by eligibility; and
 - c) any other information or data that may be pertinent to promoting transparency and accountability of the ESA program.

Policy Handbook

20. Requires ADE to develop and publish a policy handbook by July 1 of each year.
21. Requires the policy handbook to include information pertaining to all policies adopted by ADE in order to administer the ESA Program.
22. Limits the policies that ADE may administer to only those published in the policy handbook.
23. Prohibits ADE from publishing the policy handbook, making any revisions or enforcing any new policy or procedure before the completion of both of the following:
 - a) the collection of public comments for at least 60 days, which ADE is required to consider and reasonably incorporate in the policy handbook; and
 - b) the submission of a copy of the policy handbook and any revisions to the Governor, President of the Senate and Speaker of the House of Representatives.

Third-Party Contracts

24. Requires ADE to enter into one or more contract with one or more private contractors by December 15, 2017, to assist in the administration of the ESA Program.

25. Requires the contracts to assist in the administration of both of the following:
 - a) processing applications and making qualified student eligibility determinations; and
 - b) financial transactions, including the management of monies, the approval of eligible expenses and data reporting.
26. Requires any contract entered into by ADE to be used to enhance the administration of the ESA Program and to ensure additional accountability and transparency.
27. Directs ADE to prepare proposed legislation for the 2018 regular legislative session if it is necessary to effectuate the contracts.
28. Modifies requirements concerning financial management of ESA accounts as follows:
 - a) includes ADE, in addition to the Treasurer, as an entity required to contract with private financial management firms; and
 - b) requires, rather than allows, these entities to contract with the firms.

Qualified Expenses

29. Expands allowable ESA expenses to include the following:
 - a) 529 College Savings Accounts and caps the contributions to 529 and 530 Coverdell Accounts at \$2,000 annually; and
 - b) costs associated with third party evaluations that determine if a student is eligible to receive educational therapies.

ESA Review Council

30. Establishes the ESA Review Council consisting of the following members:
 - a) six members appointed by the Governor who are parents of children who are currently enrolled in an ESA and who have been enrolled for at least two years;
 - b) the chairpersons of the Education Committees of the Senate and the House of Representatives; and
 - c) the Superintendent of Public Instruction or the Superintendent's designee.
31. Requires the ESA Review Council to do the following:
 - a) review and make recommendations to ADE regarding the administration of ESAs;
 - b) make recommendations to the Legislature for changes to laws regarding ESAs;
 - c) review and approve any contracts entered into for the financial management or administration of ESAs;
 - d) review and approve any changes to the ESA policy handbook; and
 - e) submit a report regarding the ESA Review Council's activities and recommendations by December 15 of each year to the Governor, the President of the Senate and the Speaker of the House of Representatives and provide a copy to the Secretary of State.
32. Directs ADE to provide technical assistance to the ESA Review Council.
33. Specifies appointed members serve at the pleasure of the person who made the appointment.
34. Directs the members of the Council to select a chairperson from the parent members.

35. States Council members are not eligible to receive compensation, but the parent members are eligible for reimbursement of expenses.
36. Terminates the ESA Review Council on January 1, 2021.

Miscellaneous

37. Makes technical and conforming changes.
38. Becomes effective on the general effective date, with a retroactive provision as noted.

Amendments Adopted by Committee

- Makes a technical change concerning kindergartner eligibility.

Revision

- Updates the fiscal impact statement to reflect the fiscal note.

Senate Action

ED 2/2/17 DPA 4-3-0

Prepared by Senate Research

February 22, 2017

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